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No. 163] NEW DELHI, SATURDAY, JUNE 20, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 6th June 1953

S.R.O. 1196.—Whereas the election of Thakur Ganpat Singh, as a member of the Legislative Assembly of the State of Ajmer, from the Nayannagar constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XI.III of 1951), by Shri Bhairon, s/o Shri Chhoga, village Kharwa, P.O. Kharwa, District Ajmer;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, STATE OF AJMER

ELECTION PETITION No. 234 OF 1952

CORAM.

Shri J. D. Sharma—*Chairman.*

Shri C. Jacob.
Shri S. N. Agarwal { *Members of the Election Tribunal.*

Shri Bhairon, s/o Chhoga of village Kharwa represented by Shri Mukat Beharilal Bhargava, Advocate, Ajmer—*Petitioner.*

Versus

1. Thakur Ganpat Singh, s/o Thakur Gopalsingh, Istimrardar of Kharwa represented by Shri Debi Dayal Bhargava, Advocate, Ajmer.
2. Shri Jawahara, s/o Shiv Nath, Jat of Gopalpura.
3. Shri Kundanmal Kicha, Ajmeri Gate, Beawar.
4. Shri Brij Mohan Lal Sharma, Advocate, Beawar, represented by Shri S. S. Deedwania, Advocate, Ajmer.
5. Kr. Kesheo Singh, s/o Th. Ganpatsingh of Kharwa.
6. Shri Sadual, s/o Birdha, Merat of village Ramawas, represented by Shri Kaushal Kishore Bhargava, Advocate, Beawar—*Respondents.*

JUDGMENT

This is a petition challenging the election of respondent No. 1 Thakur Ganpatsingh to the Ajmer Legislative Assembly from the Nayanagar Constituency and for a declaration that the petitioner was duly elected from this constituency.

The petition was presented before the Assistant Secretary, Election Commission on 2nd May 1952 and bears an endorsement that it was presented by Sri Madan Singh who had been duly authorised in this behalf by the petitioner.

The petitioner and respondent Nos. 1 to 6 were candidates from the above mentioned constituency but the election which was held in January 1952 was contested only by the petitioner and respondents Nos. 1 to 3. The respondents Nos. 4 and 5 withdrew their candidature before the last date fixed for withdrawals. The nomination of respondent No. 6 Shri Sadhul was rejected by the Returning Officer on the ground that his two nomination papers were proposed and seconded by the same persons. Against the nomination of respondent No. 1 the petitioner had taken an objection before the Returning Officer at the time of scrutiny that he as Istimrardar of Kharwa was holding an office of profit within the meaning of Article 102 of the Constitution of India. This objection was rejected. On the result of the election respondent No. 1 was declared duly elected.

The petitioner has challenged the election of respondent No. 1 on the grounds that the nomination of respondent No. 1 was improperly accepted and the nomination of respondent No. 6 was improperly rejected and this has materially affected the result of the election. The petitioner has also alleged that respondent No. 1 was guilty of certain corrupt practices alleged to have been committed by or on his behalf inasmuch as he personally and through other persons distributed wine to the voters of certain villages and also paid Rs. 20 for each of the women voters for voting in his favour. The names of these villages are given in Appendix 'A' of the petition.

It is also alleged by the petitioner that the result of the election had been materially affected by the non-compliance of the provisions of the Representation of the People Act and the Rules because the voters of villages Liri, Pabuthan and Rampura were made to go to a distance of about seven miles for casting their votes as a consequence of which not a single woman voter from Rampura went to cast her vote and only ten lady voters cast their votes from villages Liri and Pabuthan.

Written statements have been filed only on behalf of respondents Nos. 1, 4 and 6. The main contestant is respondent No. 1 who has pleaded that as Istimrardar of Kharwa he was not a holder of an office of profit within the meaning of Article 102 of the Constitution of India and so he was not disqualified for election. He has also denied all the allegations about corrupt practices. On his application the Tribunal had directed the petitioner to give further particulars about those corrupt practices but no such particulars were given. The petitioner then gave up the ground about the corrupt practices.

Respondent No. 4 has filed a written statement admitting all the allegations of the petitioner. Respondent No. 6 has also filed a lengthy written statement supporting the case of the respondent No. 1. He has also alleged that even if his nomination was accepted he would have withdrawn from the election because he had come to know before the scrutiny of the nomination papers that all his supporters had deserted him so much so that he could not even get more than one proposer and one seconder for his nomination. This respondent had also raised a plea that the presentation of the petition was invalid and illegal for want of an authority in favour of Shri Madan Singh as required by Section 81(2) of the Representation of the People Act.

From the pleadings of the parties following issues were framed:—

- (1) Has the petition been properly presented?
- (2) Does the respondent No. 1 as Istimrardar of Kharwa hold an office of profit as defined under Article 102 of the Constitution of India; and was his nomination improperly accepted?
- (3) Was the nomination of the respondent No. 6 improperly rejected? Has the rejection materially affected the election?
- (4) Could not the lady voters of villages Liri, Pabuthan and Rampura go to the polling booths because of the alleged distance of 7 miles from their places of residence? If so, how does the fact affect the election?
- (5) To what relief, if any, is the petitioner entitled?

Our findings on the above issues are as under:—

Issue No. 1.—Clause (a) of Section 81(2) of the Representation of the Peoples Act lays down that an election petition may be presented either by the person making the petition or by a person authorised in writing in this behalf by the person making the petition. In the present case the petition was presented by Shri Madan Singh on behalf of the petitioner. It was contended by the learned counsel for the contesting respondent that there was no valid presentation because the petition was not accompanied by any written authority in favour of Shri Madan Singh as required by the above mentioned provision. This contention has no force. The petition bears an endorsement by the Assistant Secretary to the Election Commission that it was presented by Shri Madan Singh who had been duly authorised in this behalf by the petitioner. There is nothing to rebut the presumption about the correctness of this endorsement. In addition, the petitioner has sworn that he had authorised Shri Madan Singh in writing to present the petition on his behalf. We, therefore, find that the petition has been properly presented.

Issue No. 2.—The expression “Office of Profit” is not defined in the Constitution or the Representation of the Peoples Act, but it is not a term of art and its meaning and import are well understood. The essential characteristics of an “Office of Profit” are:—

- (1) It involves an appointment by the State in one form or the other.
- (2) It carries emoluments payable mostly periodically.
- (3) Is for a limited period.
- (4) Is terminable.
- (5) Is not assignable.
- (6) Is not heritable.
- (7) The holder of the office must be *sui juris*.

It has to be judged in the light of the above characteristics, whether an Istimrardar is the holder of an office of profit. According to Wilson's Glossary p. 345 an Istimrardar is a farm or lease granted in perpetuity by the Government or Zamindar at a stipulated rate. An Istimrardar is the holder of a perpetual farm or lease. Under Section 20, Regulation II of 1877, an Istimrari estate means an estate in respect of which an Istimrari Sanad has been granted before the passing of the Regulation by the Chief Commissioner with the previous sanction of the Governor General in Council and Istimrardar means the person to whom such a Sanad has been granted or any other person who becomes entitled to the Istimrari estates in succession to him. The status of an Istimrardar has, therefore, to be determined on the basis of the Sanad in his favour. The main terms and conditions of the Sanad are:—

- I. “The Istimrardar shall at all times remain faithful in his allegiance to Her Majesty Queen Victoria, Her Heirs and Successors, and perform all the duties which, in virtue of such allegiance, may be demanded from him. If any question arises as to whether this condition has been faithfully observed, the decision thereon of the Governor General in Council shall be final.
- IV. He shall, in accordance with custom, make reasonable provision for the support of such surviving relatives of his immediate predecessor as are hereinafter mentioned, and, in the event of any dispute arising as to such provision, shall conform without objection to the orders he may receive from the Chief Commissioner or other Principal Officer charged with the administration of Ajmer. The relatives above referred to are the following:—Grand parents, parents, widows, brothers, sisters, sons, whether natural born or adopted, daughters, nephews, nieces and grand-children.
- X. He shall furnish to the Deputy Commissioner all statistics and information for which he, under the orders of Government, may call, and shall keep up such establishments as may be declared necessary for the preparation of such statistics, or for the supply of such information.
- XI. He shall report all crime occurring on his Estate, and assist in its detection, or repression, in such a way as he may be directed, he shall not harbour offenders within his Estates, and he shall use his best endeavours to preserve order and prevent crime, and whenever called on by the officers of Government for assistance he shall render every aid and assistance in his power.”

Particular stress is laid on the condition that an Istimrardar will owe allegiance to Queen Victoria and her successors and the Governor General will be the final judge of whether an Istimrardar has been true to his allegiance. The mere fact that an Istimrardar under the Sanad owes allegiance to the Crown cannot, by itself, lead to the conclusion that he is a holder of an office of profit. Every citizen, in a way owes allegiance to the Crown who is now replaced by the Constitution of India. It is open to question if in view of the fundamental rights mentioned in the Constitution of India, allegiance can be demanded of an Istimrardar which cannot be demanded of any other citizen of the State.

Also the provision in the Sanad for providing maintenance to a certain class of relations does not make an Istimrardar a holder of an office of profit or detract in any manner from his status as an ordinary citizen. The provision is a necessary corollary to the mode of succession which is by rule of primogeniture. At the same time, it creates an obligation and does not confer a right on the Istimrardar. It is most significant that in the Sanad there is no condition for resuming the Estate and there has been no instance in which an Estate has been resumed. Thakur Gopal Singh, the old Istimrardar of Kharwa was detained under Regulation III of 1818 for his activities considered disloyal at that time but the Estate was not resumed and it was at his own instance that Thakur Gopalsingh abdicated the Estate in favour of his son. It clearly means that the Estate of an Istimrardar is not terminable as an office of profit is at the option of the Estate and also of its holder.

An "Istimrari Estate" does not carry any emoluments as an office of profit does. The contention of the petitioner is that an office of profit may have perquisites not essentially in the nature of salary and an Istimrardar has the largest perquisite in the shape of a fixed charge. The term "Istimrar" itself connotes a farm or lease in perpetuity at a fixed charge. That is no doubt a valuable perquisite inasmuch as the Estate is not liable to enhancement of charge but an Istimrari Estate is not an exception in this respect. There is permanent settlement in the whole of Bengal and in the eastern Districts of the U.P. Hence the mere fact that the Estate is held in perpetuity at a fixed charge does not make it an office of profit. Further reliance is placed on the provisions of Regulation II of 1877 relating to Istimrari Estates. Section 21 provides that all tenants in an Istimrari Estate shall be presumed to be tenants-at-will. Under section 22, an Istimrardar cannot alienate his Estate except for a life. Section 23 lays down the rule of succession and provides that no adoption made by a widow shall be deemed valid until confirmed by the Governor General in Council. Under section 24, any question as to the right to succeed to the Istimrari Estate arising in a case not provided for by section 23 shall be decided by the Governor General in Council or by such officer as he may appoint in this behalf subject to the proviso that the Governor General in Council may grant a certificate declaring that the matter is one proper to be determined by a civil court. Section 25 says that all claims for maintenance against an Istimrardar by any member of his family shall be preferred to the Chief Commissioner whose decision thereon shall be final. Section 27 confers on an Istimrardar the privilege of being tried for a criminal offence by the District Magistrate or Sessions Judge with the previous sanction of the Chief Commissioner. Under section 28, no Istimrardar can be arrested in execution of any process of any civil or revenue court except with the previous sanction of the Chief Commissioner. And under section 29 no decree for money against an Istimrardar can be executed after his death and no decree for money can be passed against any person as the representative of a deceased Istimrardar.

Certain privileges are, no doubt, attached to an Istimrari Estate, but neither singly nor collectively are they such as to make an Istimrari Estate an office of profit. It is not uncommon to find provisions in the old enactments laying down that the tenants of a particular Estate shall be tenants-at-will. Under section 21, there is only a presumption that the tenants are at will. It does not mean that there cannot be tenants other than tenants-at-will. The provision relating to an adoption by a widow only places a disability on her and is by no means a characteristic of an office of profit. Similarly the provisions relating to succession and maintenance do not confer on an Istimrardar the status of a holder of an office of profit. The privilege conferred by section 27 is inconsistent with the provisions of the Constitution of India and their validity is open to question. It is also doubtful if the provision really confers a privilege.

Section 28 does confer a privilege on an Istimrardar but women are entitled even to a greater privilege as they cannot be arrested at all in a decree for money. We are, therefore, of the opinion that none of the provisions in Regulation II of 1877 confers on an Istimrardar the status of the holder of an office of profit.

It is further pointed out that an Istimrardar has the privilege of distilling liquor without a licence. Under section 67 of Regulation No. 1 of 1915, the State Government is empowered to confer this privilege on any person. It is not one of the privileges mentioned in the Sanad. It is further pointed out that an Istimrardar can keep arms without having to pay license fee. Under section 27 Arms Act, the State Government can exempt any person from the license fee. It is also urged that an Istimrardar is under an obligation to provide force for the maintenance of law and order. Reliance in this connection is placed upon a circular dated 22nd November, 1951. Under section 17 Police Act, the services of any person can be requisitioned to help in the maintenance of law and order. Similar duties are prescribed by sections 42, 43 and 44 Cr. P.C. It is noteworthy that under the Scheduled Districts Act 1871, the Criminal Procedure Codes of 1861 and 1871 did not apply to the province of Ajmer. Some provisions peculiar to the province had, therefore, to be made for the maintenance of law and order and it was why a duty was cast on an Istimrardar to provide necessary force when so required. It will, thus, appear, that an Istimrardar lacks almost all the essential elements of a holder of an office of profit.

- (1) He is not an appointee of the State. (All the present Istimrardars are by virtue of succession).
- (2) He does not have the emoluments which the holder of an office of profit has. Indeed he gets no remuneration from the State.
- (3) He holds the estate in perpetuity and not for a limited period.
- (4) The estate is not terminable.
- (5) The estate is assignable at least for life. (An office is never assignable.)
- (6) The estate is heritable. (An office is seldom heritable.)
- (7) The holder of the office must be *sui juris*.

All these characteristics materially distinguish an Istimrari Estate from an office of profit and it is impossible to hold that an Istimrardar is the holder of an office of profit.

It has been pointed out that an Istimrardar is absolutely subservient to the Government and the policy underlying Article 102 of the Constitution is that all persons who are under subservience or tutelage to the government should be disqualified for the membership of a legislature. Subservience or the so called tutelage to the government is not a test of judging whether a particular person holds an office of profit as it is not possible to lay down any standard for judging the degree of subservience. Article 102 places a restriction on eligibility for election and must therefore be strictly interpreted and no office which does not satisfy the essential elements of an office of profit as commonly understood can fall under the scope of Article 102.

Reliance has been placed upon the decision reported in the Gazette Extraordinary dated 23rd August 1952 in which Shrimati Hansa Mehta was held to be disqualified for election on the ground that as Vice-Chancellor of the University of Baroda she held an office of profit under Article 102 of the Constitution. She was appointed Vice Chancellor by the State Government and held the office for a limited period. She was also removable by the State under certain circumstances. The decision has therefore no bearing on this case. Further reliance has been placed upon the decision of the Election Commission reported in the *Gazette of India Extraordinary*, dated 2nd April 1953. That case also has no bearing as the members of the Legislative Assembly were the appointees of the State Government and as members of the District Advisory Council drew certain emoluments. On behalf of the respondent No. 1 reliance is placed upon the decision of the Cuttack Tribunal reported in the *Gazette Extraordinary*, dated 24th February 1953 in which it was held that a Sarbarekar was not a holder of an office of profit, although many of the incidents consistent with the position of an office holder are common to the Sarbarekar.

We are therefore of the opinion that the respondent No. 1 as an Istimrardar did not hold an office of profit and was not disqualified for the membership of the legislature and his nomination papers were not improperly accepted.

Issue No. 3.—This issue relates to the rejection of the nomination of respondent No. 6, Shri Sadul. Two nomination papers were received by the Returning Officer for Shri Sadul and in both these nomination papers the proposers and the seconders were the same persons *viz.*, Azima and Karima respectively. The Returning Officer rejected both these nomination papers on the ground that they were proposed and seconded by the same set of persons and so the provisions of Section 33(2) of the Representation of the Peoples Act were violated. Learned counsel for the petitioner urged that the decision of the Returning Officer was erroneous because it was based on a wrong interpretation of Section 33(2). On the other hand, the learned counsel for the contesting respondent supported the decision of the Returning Officer and contended that a voter cannot propose or second more than one nomination paper.

We find that decision of the Returning Officer in rejecting the nomination paper is not sustainable. There is no provision in the Representation of the Peoples Act debarring a voter to be a proposer or a seconder in more than one nomination paper. The restriction laid down in proviso to Section 33(2) does not apply to a single constituency. Clause 7 of Section 33 makes it further clear that a candidate can be nominated by more than one nomination paper for election in the same constituency. It is apparent from the provisions of Section 33 that the choice of a proposer and a seconder is restricted in so far as the number of seats in the constituency are concerned but his choice for the number of nomination papers within that limitation is not restricted. Similar point came up for decision before the Election Tribunal of Delhi in "Shri Hans Raj Vs. Ram Singh" (Election Petition No. 2 of 1952). In that case one Shri Fatch Singh had filed three nomination papers and he was the proposer in two of them. The Returning Officer rejected all the three nomination papers on the ground that the proposer had subscribed more than one nomination paper. It was held that the rejection was wrong. This decision was followed by the Sikandrabad Election Tribunal in Election, Petition No. 1 of 1952. We are in full agreement with the above decision. It was also argued by the learned counsel for the contesting respondent that nomination papers of Shri Sadul were invalid because they did not specifically mention the name of the agent but only contained the word "myself". According to him a candidate, even if he was appointing himself as an agent, must write his name in view of clause 3 of Section 33. We are unable to accept this view. A plain reading of clause 3 of Section 33 makes it amply clear that a candidate was bound to give the name of his agent only when he appoints somebody else other than himself as an agent. The clause "who shall be named in the declaration" does not apply to cases when the candidate has appointed himself as the agent. The same view was held by the Assam Tribunal reported in the *Gazette Extraordinary*, Part I—Section 1, dated the 11th November 1952 at page 2396(d) in Election Petition No. 21 of 1952. In fact in the form for nomination itself the word "Myself" has been used. We see no irregularity if the name of the candidate is not specifically mentioned in the nomination papers. Otherwise too, even if the nomination paper was assumed to be defective in this respect the defect was not of a substantial character. It is, therefore, held that the nomination papers of Shri Sadul were improperly rejected and the issue is accordingly decided in the affirmative.

The improper rejection of the nomination of Shri Sadul has materially affected the result of election. The electorate by this improper rejection had been deprived of the right to vote for respondent No. 6 and a presumption arises that this has materially affected the result of the election.

Issue No. 4.—One of the grounds for challenging the validity of election is that the provisions of the Representation of the Peoples Act and the Rules framed thereunder had not been complied with inasmuch as the voters of villages Lidi, Pabuthan and Rampura were made to go to a distance of about 7 miles for voting with the result that the women voters did not cast their votes. The petitioner in support of this examined himself and two other witnesses—Kajja and Sobhagmal. From this evidence we are not satisfied that any of the Lidi voters did not go for voting on account of the distance. No women voters from this village have been examined to prove that they did not cast their votes on account of the distance from the polling station. In fact, witness Sobhag Mal of village Lidi admitted that about 20 or 30 women voters did cast their votes and the village was only 5 miles from Maila polling station. The petitioner before the election did not file any written objection protesting that Maila was too far from these villages. Considering all these facts we find that the petitioner has failed to substantiate that women voters of the villages did not vote on account of distance from the polling station.

Issue No. 5.—In view of our decision on issue No. 3 the election of respondent No. 1 has to be set aside.

ORDER

The petition is accordingly accepted and the election of respondent No. 1 is declared void and is set aside. Under the circumstances of the case we direct that the parties should bear their own costs.

J. D. SHARMA, *Chairman.*

L. JACOB, *Member.*

S. N. AGARWAL, *Member.*

Election Tribunal.

[No. 19/234/52-Elec III/8647.]

P. R. KRISHNAMURTHY, *Asstt. Secy.*

The 22nd May, 1953.